

Miguel Rodriguez

Screened By: NARA (RD-F) Date: 08-08-2018 DOCID: 70105224



GEORGETOWN UNIVERSITY LAW CENTER

Samuel Dash
Professor of Law

TO: Honorable Kenneth W. Starr
Independent Counsel, Whitewater

FROM: Professor Samuel Dash
Ethics Counsel *S.D.*

RE: Miguel Rodriguez

DATE: February 6, 1995

This is in response to your request that I review and comment on Miguel Rodriguez's letter of resignation dated January 17, 1995 in my capacity as Ethics Counsel to you and your office.

My review of Miguel's letter has been aided by information I received earlier on his performance of his assignment from you to review the evidence upon which a previous finding was based by Special Counsel Fisk and his staff that the Foster death was a suicide, and to recommend to you whether on the basis of that evidence and any additional evidence, the cause and circumstances of Foster's death should be reinvestigated by you. This information included a report from Mark Tuohey on [redacted]

[redacted] a memorandum to file by Miguel dated December 9-29, 1994, and a detailed presentation by Miguel on his investigation to Mark and me at a meeting on January 16, 1995.

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

Of course, it is sad that Miguel believes, as his letter makes clear, that there has been some kind of conspiracy in your office in Washington against him and that he "was forced out of this job" because he raised a series of questions about the validity of the Fisk finding. It is this kind of unfounded suspicion leading him to act alone in distrust of other prosecutors and investigators in the office that underlines the problem Miguel has posed for your office.

You will recall that after I read Miguel's December memorandum detailing his factual findings to date and presenting his inferences and theories, I met with you and informed you that Miguel's memorandum caused me to [redacted]

[redacted] Throughout his memorandum he made claims of factual discoveries by him which he charged had been overlooked by the Fisk investigation. This was factually not true. I was able to find in the Fisk report references to and evaluations of these same factual matters.

The most troublesome of Miguel's claims of neglect by the Fisk investigation was his "discovery" of photographic and eye-witness evidence of a bullet wound on Foster's neck, which, in his mind, supported a theory of homicide. He charged that "the neck area and original photographs had not been investigated by Fisk counsel." To the contrary, Special Counsel Fisk specifically referred in his report to the information suggesting a bullet wound in Foster's neck, and concluded, "These wounds did not exist. The autopsy results, the photographs taken at the scene, and the observations made by park police investigators conclusively show there were no such wounds." Fisk made this finding, after acknowledging, but rejecting because of the strong forensic evidence, the claims of two members of the Fairfax County EMS, George Gonzalez and Richard Arthur, that they believed they saw bullet wounds on Foster's face or neck.

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FOIA(b)(7) - (C)

On the basis of my report to you, you asked Mark and me to meet with Miguel to give him the opportunity to present to us the results of his investigation and where he believed it should go. You were supportive of Miguel's hard work and efforts, and wanted my experienced judgment after such a presentation on the merits and professionalism of his work. The meeting occurred in the afternoon of January 16, 1995. Miguel presented a detailed review of his investigation, using drawings and enlarged and enhanced photographs to support his presentation. Much of what he presented had been discussed in his memorandum. Some new information included his learning (what the Fisk investigation had earlier known) about a second parking lot and entrance to Ft. Marcy Park.

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

During the course of his presentation, I questioned some of his inferences as unsupported by his evidence. For example, he had concluded that the gun found in Foster's hand was a "stranger" gun, unconnected with the Foster family. He offered no evidence to support this conclusion, which was contradicted by evidence of the gun's connection to Foster contained in the Fisk report. Also, to prove what had by this time become a conviction on his part that Foster had been wounded in the neck, Miguel produced an enlarged and enhanced blow up of what he claimed to be an original polaroid photograph of Foster's head, neck, and shoulder area. He insisted that a reddish oval mark on the right side of Foster's neck was either a bullet hole or a wound from a stun gun. I have had experience examining such photos in homicide cases, and I looked

very closely at the marks on the Photograph Miguel referred to. They appeared to me to represent dried blood caked on the neck. In no way could I identify a bullet hole or any other kind of wound.

In fairness to Miguel, I suggested that he have the blown up photograph examined by a forensic photography expert. Similarly, even though Mark and I questioned the validity of some of Miguel's conclusions or inferences, we told him that he should follow up the investigatory leads he wanted to pursue, including the second entrance and parking lot, the source of the gun, the wound he believed to exist on Foster's neck, and a number of other matters he had presented. Contrary to what Miguel stated in his letter, the

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

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Miguel reacted to this information negatively, expressing doubts about his ability to further his investigation, and demonstrating a suspicion as to the motives of Mark, the new FBI agent and others in the office that I found to be unnatural and clearly unjustified by what had occurred at the meeting. This attitude was emphasized when Miguel declared that the "wound" on Foster's neck will never be established. I asked him why he believed this - because he would be unable to prove it - or because he would be prevented from proving it?. He replied that he would not be allowed to prove it. This amazing assertion led me to tell him that I completely disagreed that either you or Mark would engage in a cover up of an investigation and prevent him from doing his job. I assured him that he would be supported by the office to complete his investigation expeditiously, and that your decision in this matter would be made solely on the evidence and its strength.

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